

David W. Evans (Bar No. 79466)
 Nairi Chakalian (Bar No. 212976)
 HAIGHT BROWN & BONESTEEL LLP
 71 Stevenson Street, 20th Floor
 San Francisco, California 94105-2981
 Telephone: 415.546.7500
 Facsimile: 415.546.7505

Attorneys for Defendants Bart Y. Lau, Trustee; Jindart Lau, Trustee; Benjamin C.K. Lau, Trustee; Francis T.H. Lau, Trustee; Joanne M.H. Lau, Trustee; Gary T.Y. Lau, Trustee; Linda C. Lau, Trustee; Lawrence Y.K. Lau, Trustee; Amy L. Ko Lau, Trustee; Sabina W.M., Trustee of The Sabina Wai Mai Lau Revocable Trust

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LES JANKEY, an individual; and
 DISABILITY RIGHTS,
 ENFORCEMENT, EDUCATION,
 SERVICES; HELPING YOU HELP
 OTHERS; a California public benefit
 corporation,

Plaintiffs,

vs.

BART Y. LAU, TRUSTEE; JINDART
 LAU, TRUSTEE; BENJAMIN C.K. LAU,
 TRUSTEE; FRANCIS T.H. LAU,
 TRUSTEE; JOANNE M.H. LAU,
 TRUSTEE; GARY T.Y. LAU, TRUSTEE;
 LINDA C. LAU, TRUSTEE; LAWRENCE
 Y.K. LAU, TRUSTEE; AMY L. KO LAU,
 TRUSTEE; SABINA W.M., TRUSTEE
 OF THE SABINA WAI MAI LAU
 REVOCABLE TRUST DATED JUNE 20,
 1995, a.k.a. AMISHA INDIAN CUISINE,

Defendants.

Case No. CV 09-2056 WDB

ANSWER TO COMPLAINT

Complaint Filed: May 11, 2009

COMES NOW, Defendants Bart Y. Lau, Trustee; Jindart Lau, Trustee; Benjamin C.K. Lau, Trustee; Francis T.H. Lau, Trustee; Joanne M.H. Lau, Trustee; Gary T.Y. Lau, Trustee; Linda C. Lau, Trustee; Lawrence Y.K. Lau, Trustee; Amy L. Ko Lau, Trustee; Sabina W.M., Trustee of The Sabina Wai Mai Lau Revocable Trust (collectively "Defendants"), and in responding to plaintiffs' ("Plaintiffs") complaint herein, admit, deny

1 and allege as follows:

2 1. In response to Paragraph 1, Defendants lack sufficient information and belief
3 to either admit or deny the allegations contained within this paragraph, and based upon
4 said lack of information and belief, deny the allegations contained therein.

5 2. In response to Paragraph 2, Defendants deny the allegations contained within
6 this paragraph.

7 3. In response to Paragraph 3, Defendants admits the allegations contained
8 within this paragraph.

9 4. In response to Paragraph 4, Defendants admit the allegations contained
10 within this paragraph.

11 5. In response to Paragraph 5, Defendants lack sufficient information and belief
12 to either admit or deny the allegations contained within this paragraph, and based upon
13 said lack of information and belief, deny the allegations contained therein.

14 6. In response to Paragraph 6, Defendants lack sufficient information and belief
15 to either admit or deny the allegations contained within this paragraph, and based upon
16 said lack of information and belief, deny the allegations contained therein.

17 7. In response to Paragraph 7, Defendants lack sufficient information and belief
18 to either admit or deny the allegations contained within this paragraph, and based upon
19 said lack of information and belief, deny the allegations contained therein.

20 8. In response to Paragraph 8, Defendants admit only that they have an
21 ownership interest in said property. In all other respects, Defendants deny the allegations
22 contained within this paragraph.

23 9. In response to Paragraph 9, Defendants admit only that they have an
24 ownership interest in said property. In all other respects, Defendants deny the allegations
25 contained within this paragraph.

26 10. In response to Paragraph 10, Defendants lack sufficient information and
27 belief to either admit or deny the allegations contained within this paragraph, and based
28 upon said lack of information and belief, deny the allegations contained therein.

1 11. In response to Paragraph 11, Defendants admit that Amisha Indian Cuisine is
2 a tenant at 1924 Irving Street, San Francisco, California. In all other respects, Defendants
3 deny the allegations contained within this paragraph.

4 12. In response to Paragraph 12, Defendants lack sufficient information and
5 belief to either admit or deny the allegations contained within this paragraph, and based
6 upon said lack of information and belief, deny the allegations contained therein.

7 13. In response to Paragraph 13, Defendants deny the allegations contained
8 within this paragraph.

9 14. In response to Paragraph 14, Defendants lack sufficient information and
10 belief to either admit or deny the allegations contained within this paragraph, and based
11 upon said lack of information and belief, deny the allegations contained therein.

12 15. In response to Paragraph 15, Defendants lack sufficient information and
13 belief to either admit or deny the allegations contained within this paragraph, and based
14 upon said lack of information and belief, deny the allegations contained therein.

15 16. In response to Paragraph 16, Defendants lack sufficient information and
16 belief to either admit or deny the allegations contained within this paragraph, and based
17 upon said lack of information and belief, deny the allegations contained therein.

18 17. In response to Paragraph 17, Defendants lack sufficient information and
19 belief to either admit or deny the allegations contained within this paragraph, and based
20 upon said lack of information and belief, deny the allegations contained therein.

21 18. In response to Paragraph 18, Defendants lack sufficient information and
22 belief to either admit or deny the allegations contained within this paragraph, and based
23 upon said lack of information and belief, deny the allegations contained therein.

24 19. In response to Paragraph 19, Defendants lack sufficient information and
25 belief to either admit or deny the allegations contained within this paragraph, and based
26 upon said lack of information and belief, deny the allegations contained therein.

27 20. In response to Paragraph 20, Defendants lack sufficient information and
28 belief to either admit or deny the allegations contained within this paragraph, and based

1 upon said lack of information and belief, deny the allegations contained therein.

2 21. In response to Paragraph 21, Defendants lack sufficient information and
3 belief to either admit or deny the allegations contained within this paragraph, and based
4 upon said lack of information and belief, deny the allegations contained therein.

5 22. In response to Paragraph 22, Defendants lack sufficient information and
6 belief to either admit or deny the allegations contained within this paragraph, and based
7 upon said lack of information and belief, deny the allegations contained therein.

8 23. In response to Paragraph 23, Defendants deny the allegations contained
9 within this paragraph.

10 24. In response to Paragraph 24, Defendants deny the allegations contained
11 within this paragraph.

12 25. In response to Paragraph 25, Defendants deny the allegations contained
13 within this paragraph.

14 26. In response to Paragraph 26, Defendants deny the allegations contained
15 within this paragraph.

16 27. In response to Paragraph 27, Defendants deny the allegations contained
17 within this paragraph.

18 28. In response to Paragraph 28, Defendants lack sufficient information and
19 belief to either admit or deny the allegations contained within this paragraph, and based
20 upon said lack of information and belief, deny the allegations contained therein.

21 29. In response to Paragraph 29, Defendants deny the allegations contained
22 within this paragraph.

23 30. In response to Paragraph 30, Defendants deny the allegations contained
24 within this paragraph.

25 31. In response to Paragraph 31, Defendants deny the allegations contained
26 within this paragraph.

27 32. In response to Paragraph 32, Defendants deny they personally operate the
28 restaurant. As to the remaining allegations contained within this paragraph, Defendants

1 lack sufficient information and belief to either admit or deny the allegations contained
2 within this paragraph, and based upon said lack of information and belief, deny the
3 allegations contained therein.

4 33. In response to Paragraph 33, Defendants lack sufficient information and
5 belief to either admit or deny the allegations contained within this paragraph, and based
6 upon said lack of information and belief, deny the allegations contained therein.

7 34. In response to Paragraph 34, Defendants deny the allegations contained
8 within this paragraph.

9 35. In response to Paragraph 35, Defendants deny the allegations contained
10 within this paragraph.

11 36. In response to Paragraph 36, Defendants deny the allegations contained
12 within this paragraph.

13 37. In response to Paragraph 37, Defendants deny the allegations contained
14 within this paragraph.

15 38. In response to Paragraph 38, Defendants deny the allegations contained
16 within this paragraph.

17 39. In response to Paragraph 39, Defendants lack sufficient information and
18 belief to either admit or deny the allegations contained within this paragraph, and based
19 upon said lack of information and belief, deny the allegations contained therein.

20 40. In response to Paragraph 40, Defendants replead and incorporate by
21 reference, as if fully set forth again herein, the responses contained in Paragraphs 1
22 through 39 of this answer.

23 41. In response to Paragraph 41, Defendants lack sufficient information and
24 belief to either admit or deny the allegations contained within this paragraph, and based
25 upon said lack of information and belief, deny the allegations contained therein.

26 42. In response to Paragraph 42, Defendants lack sufficient information and
27 belief to either admit or deny the allegations contained within this paragraph, and based
28 upon said lack of information and belief, deny the allegations contained therein.

1 43. In response to Paragraph 43, Defendants lack sufficient information and
2 belief to either admit or deny the allegations contained within this paragraph, and based
3 upon said lack of information and belief, deny the allegations contained therein.

4 44. In response to Paragraph 44, Defendants lack sufficient information and
5 belief to either admit or deny the allegations contained within this paragraph, and based
6 upon said lack of information and belief, deny the allegations contained therein.

7 45. In response to Paragraph 45, Defendants admit that there are certain specific
8 prohibitions against discrimination in the United States Code. Defendants deny the
9 allegations contained within Paragraph 45, starting on page 16, lines 6 through 9.

10 46. In response to Paragraph 46, Defendants deny the allegations contained
11 within this paragraph.

12 47. In response to Paragraph 47, Defendants deny the allegations contained
13 within this paragraph.

14 48. In response to Paragraph 48, Defendants deny the allegations contained
15 within this paragraph.

16 49. In response to Paragraph 49, Defendants deny the allegations contained
17 within this paragraph.

18 50. In response to Paragraph 50, Defendants deny the allegations contained
19 within this paragraph.

20 51. In response to Paragraph 51, Defendants lack sufficient information and
21 belief to either admit or deny the allegations contained within this paragraph, and based
22 upon said lack of information and belief, deny the allegations contained therein.

23 52. In response to Paragraph 52, Defendants replead and incorporate by
24 reference, as if fully set forth again herein, the responses contained in Paragraphs 1
25 through 51 of this answer.

26 53. In response to Paragraph 53, Defendants lack sufficient information and
27 belief to either admit or deny the allegations contained within this paragraph, and based
28 upon said lack of information and belief, deny the allegations contained therein.

1 54. In response to Paragraph 54, Defendants lack sufficient information and
2 belief to either admit or deny the allegations contained within this paragraph, and based
3 upon said lack of information and belief, deny the allegations contained therein.

4 55. In response to Paragraph 55, Defendants lack sufficient information and
5 belief to either admit or deny the allegations contained within this paragraph, and based
6 upon said lack of information and belief, deny the allegations contained therein.

7 56. In response to Paragraph 56, Defendants deny the allegations contained
8 within this paragraph.

9 57. In response to Paragraph 57, Defendants deny the allegations contained
10 within this paragraph.

11 58. In response to Paragraph 58, Defendants deny the allegations contained
12 within this paragraph.

13 59. In response to Paragraph 59, Defendants deny the allegations contained
14 within this paragraph.

15 60. In response to Paragraph 60, Defendants deny the allegations contained
16 within this paragraph.

17 61. In response to Paragraph 61, Defendants deny the allegations contained
18 within this paragraph.

19 62. In response to Paragraph 62, this responding Defendant repleads and
20 incorporates by reference, as if fully set forth again herein, the responses contained in
21 Paragraphs 1 through 61 of this answer.

22 63. In response to Paragraph 63, Defendants lack sufficient information and
23 belief to either admit or deny the allegations contained within this paragraph, and based
24 upon said lack of information and belief, deny the allegations contained therein.

25 64. In response to Paragraph 64, Defendants lack sufficient information and
26 belief to either admit or deny the allegations contained within this paragraph, and based
27 upon said lack of information and belief, deny the allegations contained therein.

28 ///

1 65. In response to Paragraph 65, Defendants lack sufficient information and
2 belief to either admit or deny the allegations contained within this paragraph, and based
3 upon said lack of information and belief, deny the allegations contained therein.

4 66. In response to Paragraph 66, Defendants lack sufficient information and
5 belief to either admit or deny the allegations contained within this paragraph, and based
6 upon said lack of information and belief, deny the allegations contained therein.

7 67. In response to Paragraph 67, Defendants deny the allegations contained
8 within this paragraph.

9 68. In response to Paragraph 68, Defendants deny the allegations contained
10 within this paragraph.

11 69. In response to Paragraph 69, Defendants lack sufficient information and
12 belief to either admit or deny the allegations contained within this paragraph, and based
13 upon said lack of information and belief, deny the allegations contained therein.

14 70. In response to Paragraph 70, this responding Defendant repleads and
15 incorporates by reference, as if fully set forth again herein, the responses contained in
16 Paragraphs 1 through 69 of this answer.

17 71. In response to Paragraph 71, Defendants deny the allegations contained
18 within this paragraph.

19 72. In response to Paragraph 72, Defendants deny the allegations contained
20 within this paragraph.

21 73. In response to Paragraph 73, Defendants deny the allegations contained
22 within this paragraph.

23 74. In response to Paragraph 74, Defendants deny the allegations contained
24 within this paragraph.

25 75. In response to Paragraph 75, Defendants deny the allegations contained
26 within this paragraph.

27 ///

28 ///

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 76. Plaintiffs' Complaint fails to state a claim against Defendants upon which
4 relief can be granted.

5
6 **SECOND AFFIRMATIVE DEFENSE**

7 77. The Complaint on file herein, and each purported claim for relief stated
8 therein, is barred by the applicable statutes of limitation of the State of California,
9 including but not limited to California *Code of Civil Procedure* Sections 338 and 340, and
10 California Business and Professions Code Section 17208.

11 **THIRD AFFIRMATIVE DEFENSE**

12 78. Plaintiffs have failed to mitigate their damages and injuries, if any, and such
13 failure to mitigate their proximately caused the alleged damages and injuries, if any.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 79. Plaintiffs, in connection with any and all of the transactions or allegations
16 which are the subject of their Complaint on file herein, have not suffered and will not
17 suffer any damages by reason of the alleged acts or omissions of Defendants, and therefore
18 Plaintiffs have no valid claims against Defendants.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 80. All events, happenings, injuries, and damages referred to in Plaintiffs'
21 Complaint on file herein, were proximately caused by the negligence and/or fault of
22 plaintiffs and/or other firms, persons, corporations, or entities other than Defendants, or
23 over whom Defendants exercised no jurisdiction or control, and for whose conduct
24 Defendants are not responsible or liable; therefore, if there is found to be any fault on the
25 part of Defendants which in any manner or degree contributed to Plaintiffs' alleged
26 injuries and damages, if any, a finding should be made apportioning and affixing the
27 comparative fault of any and all such persons or parties, whether named in this action or
28 otherwise.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 81. The claims for relief alleged in Plaintiffs' Complaint on file herein are barred
3 by reason of the fact that Plaintiffs, upon being fully informed of the acts and events of
4 which they now complain, ratified and affirmed all conduct with respect to those acts and
5 events, and therefore, Plaintiffs have waived all such claims and are estopped from
6 asserting the same against Defendants.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 82. Plaintiffs are barred from recovery herein by reason of the fact that Plaintiffs
9 voluntarily and knowingly entered into and engaged in the transactions and conduct
10 alleged in the Complaint on file herein and voluntarily and knowingly assumed all risk
11 relating to said transactions and conduct at the times and places mentioned in the
12 Complaint on file herein and prior thereto.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 83. Defendants allege, upon information and belief, that any act or omission on
15 their part made the basis of any purported claim, was excused as it would have
16 fundamentally altered the nature of the services offered at 1924 Irving Street, San
17 Francisco, California.

18 **NINTH AFFIRMATIVE DEFENSE**

19 84. Defendants allege, upon information and belief, that any act or omission on
20 their part made the basis of any purported claim, was excused as the removal of the
21 barriers described herein, if any, was not readily achievable.

22 **TENTH AFFIRMATIVE DEFENSE**

23 85. Defendants allege, upon information and belief, that any act or omission on
24 their part made a basis of any purported claim, was excused as a result of structural
25 impracticability.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 86. Defendants allege, on information and belief, that some or all of Plaintiffs'
28 claims may be barred, in whole or in part, by the doctrines of *laches*, waiver, estoppel,

unclean hands, or other equitable doctrines.

TWELFTH AFFIRMATIVE DEFENSE

87. Plaintiffs are barred from recovery by reason that, at all times indicated in the Complaint on file herein, Defendants provided reasonable accommodations to handicapped individuals and exercised due diligence in their acts and activities.

THIRTEENTH AFFIRMATIVE DEFENSE

88. Defendants allege, upon information and belief, that given the work requested by Plaintiffs, Defendants' conduct was excused as a result of the undue burden of constructing the requested work at 1924 Irving Street, San Francisco, California.

FOURTEENTH AFFIRMATIVE DEFENSE

89. Defendants allege, upon information and belief, that the Complaint on file herein is improperly pled, in that it is more properly brought as a class action lawsuit, not as an individual action.

FIFTEENTH AFFIRMATIVE DEFENSE

90. Defendants allege, upon information and belief, that Plaintiffs are not the proper representatives to represent the interests of the general public or those of the disabled public.

SIXTEENTH AFFIRMATIVE DEFENSE

91. Plaintiffs are barred from recovery by reason of the fact that they improperly seek monetary damages and are seeking fluid fund recovery in violation of the law.

SEVENTEENTH AFFIRMATIVE DEFENSE

92. Plaintiffs are barred from recovery of attorneys' fees as they are not a proper form of relief in this action as Plaintiffs are not acting in the interests of, or on behalf of, any public interest group.

///

///

///

///

1 **WHEREFORE**, Defendants request that the Court enter a judgment:

- 2 a) Dismissing Plaintiffs' Complaint against Defendants with prejudice;
3 b) Declaring that Defendants have no obligation to perform additional work at
4 1924 Irving Street, San Francisco, California;
5 c) Awarding Defendants their attorneys' fees, costs and disbursements; and
6 awarding such other and further relief to Defendants as the Court deems just,
7 equitable and proper.

8 Dated: July 6, 2009

HAIGHT BROWN & BONESTEEL LLP

9
10 By: Nairi Chakalian
11 Nairi Chakalian
12 Attorneys for Defendants
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Defendants Bart Y. Lau, Trustee; Jindart Lau, Trustee; Benjamin C.K. Lau, Trustee; Francis T.H. Lau, Trustee; Joanne M.H. Lau, Trustee; Gary T.Y. Lau, Trustee; Linda C. Lau, Trustee; Lawrence Y.K. Lau, Trustee; Amy L. Ko Lau, Trustee; Sabina W.M., Trustee of The Sabina Wai Mai Lau Revocable Trust Dated demand trial by jury.

Dated: July 6, 2009

HAIGHT BROWN & BONESTEEL LLP

By: Nairi Chakalian

David W. Evans
Nairi Chakalian
Attorneys for Defendants